

REMARKS

Claims 1 - 33 are pending in the application. Claims 1, 25, and 30 are currently amended; and claims 2-24, 26-29, and 31-33 remain unchanged from the original versions thereof. Claims 1, 10, 22, and 25 are the independent claims herein.

No new matter has been added to the application as a result of the present Response. Reconsideration and further examination are respectfully requested.

Claim Rejections – 35 USC § 101

Claims 1-21, 26, 26, 28, 29, and 30 were rejected for being directed to non-statutory subject matter. In particular, claims 1, 25, and 30 were rejected for not being directed to subject matter within the technological arts.

In reply thereto, claims 1, 25, and 30 are currently amended as indicated in the claim amendments submitted herewith. Namely, claims 1, 25, and 30 are amended to include recitations of “issuing, using a processor”. Therefore, Applicant respectfully submits that claims 1, 25, and 30, and claims 2-12, 26, 28, and 29 depending therefrom, clearly recite statutory subject matter.

Accordingly, Applicant requests the reconsideration and withdrawal of the rejection of claims 1-21, 26, 26, 28, 29, and 30 under 35 USC 101.

Claim Rejections – 35 USC § 103(a)

Claims 1-12, 14, 20, and 21-24 were rejected under 35 USC 103(a) as being disclosed by Birle Jr. et. (hereinafter, Birle) in view of Barron’s Dictionary of Finance (hereinafter, Barron’s). This rejection is respectfully traversed.

Applicant’s claim 1 relates to a method for issuing a hybrid financial product. The claimed method includes, inter alia, creating a forward contract having a contract term extending from an issue date of said unit to a settlement date; creating a note securing

obligations of said holder under said forward contract; and issuing, using a processor, the forward contract and the note as a unit.

Thus, Applicant clearly claims a method for creating a forward contract, creating a note securing obligations of the holder under the forward contract, and issuing the forward contract and the note as a unit. That is, the issued unit includes the forward contract and the note securing obligations under the forward contract.

Regarding Birle, Applicant respectfully submits that Birle discloses a convertible bond, some embodiments including contingent payments. In the background thereof, Birle discusses "a common financial instrument" – a bond. As disclosed, a bond contains language indicative of a principal amount, and indicative of a borrower's obligation to repay to repay the principal at some future time. (Birle, paragraph [0003]) Thus, it is clear that the bond discussed in Birle is a debt instrument that itself contains or defines the obligations provided by the bond.

Birle further discusses convertible bonds. In particular, Birle states that "convertible bonds," are instruments which have some of the qualities of bonds as well as some of the qualities of stock. A convertible bond is a bond which can be converted by its holder into a number of shares of equity, the number being a fixed number or being determined by a formula." (Birle, paragraph [0005]) That is, a convertible provides the bondholder with the option to exchange the bond for other securities (e.g., an underlying or issuing company's stock) at some future date, under conditions prescribed by the convertible bond.

Applicant respectfully notes that the terms and provisions of the convertible bond, like the conventional bond, are contained or indicated by the bond itself.

Birle does not disclose or suggest a bond or convertible bond is a forward contract. A forward contract, as well understood by those skilled in the relevant arts of finance, is not the same as or suggestive of a bond, convertible or otherwise. As stated in Applicant's specification, a forward contract includes terms obligating the holder to

pay an amount (the "settlement price") to issuer at a particular date (the "settlement date") in exchange for a variable number of shares of stock of issuer. The forward contract specifies that holder is to receive an amount of stock of the issuer that initially (e.g., as of the "issue date" of the unit) has a value equal to the settlement price. (Specification, paragraph [0017]) Thus, consistent with the meaning of a "forward contract" within the art, the holder pays the issuer an amount ("settlement price") at some point in the future ("settlement date") upon delivery, according to the terms of the forward contract. A forward contract is an agreement to trade in the future, under the conditions provided by the forward contract.

Thus, it should be clear that a bond is not the same as a forward contract. Again, Birle does not state or suggest as much, only alleged by the Office Action and not supported by the cited reference. The disclosed bond is not a contract, including terms and provisions, to trade in the future.

Therefore, it is clear that the bonds disclosed by Birle are not the same as the forward contract claimed by Applicant. That is, Birle does not disclose that for which it is cited and relied upon for disclosing.

The Office Action also cites and relies on the bonds disclosed Birle, paragraph [0005], for also disclosing a note securing obligations of the holder under the forward contract. That is, the Office Action cites and relies on the same one item, bonds, as being both the claimed forward contract and the claimed note securing obligations of the holder under the forward contract. The reasoning provided in the Office Action does not logically make sense or support the rejection.

It is clear from the claims that Applicant claims (1) a forward contract, and (2) a claimed note securing obligations of the holder under the forward contract. The claimed (1) forward contract, and (2) note securing obligations of the holder under the forward contract, are different and distinct from each other. The aspects (1) and (2) are claimed, and disclosed throughout the specification, as being different and distinct from

each other. Additionally, the claims state that these two different components (1) and (2) are issued as a “unit”.

Contrary to the two different and distinct claimed aspects of a forward contract, and a note securing obligations of the holder under the forward contract, the Office Action cites and relies upon one single financial instrument (a bond) to disclose both of the claimed aspects. In fact, the disclosed bond is a single financial instrument that neither creates an agreement to trade in the future (as does a forward contract) nor creates a note securing obligations of the holder under the forward contract (instead, the bond itself provides the conditions of the bond).

The Office Action further relies on Barron's to disclose issuing a forward contract and a note as a unit. The cited and relied upon definition in Barron's however does not disclose, or even suggest issuing a forward contract and a note as a unit. Instead, Barron's defines a unit as, for example, “more than one class of securities traded together”. The one disclosed security example provided by Barron's for a unit is one common share and one subscription warrant. Barron's further define unit as “in primary and secondary distributions of securities, one share of stock or one bond.”

Thus, it is clear that Barron's does not disclose issuing the claimed forward contract and a note as a unit. The explicit example provided by Barron's does not state a forward contract and a note being issued as a unit.

Again, Birle fails to disclose a forward contract, it merely discloses a bond (as cited and relied upon).

Also, the failings of the rejection are evident from the language of the rejection wherein the Office Action states that one “would have found it obvious to have known that a convertible bond is issued as a unit made of a forward contract with a note known as a bond. Based on the language of the rejection, the Office Action defines a bond as “forward contract with a note”. The Office Action's definition of a bond is not supported by the cited and relied upon reference. Furthermore, the Office Action's definition of a

bond is not consistent with the meaning of a bond with in the relevant art areas of finance.

Therefore, Applicant respectfully submits that even if the bonds of Birle and the definition of a unit were combined (not admitted as feasible by Applicant), the combination would not render claim 1 obvious under 35 USC 103(a). Claims 2-12, 14, 20, and 21-24 depend from claim 1.

Accordingly, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 1-12, 14, 20, and 21-24 under 35 USC 103(a).

Claim 13 was rejected under 35 USC 103(a) as being disclosed by Birle in view of Barron's in regard to claim 1, and further in view of King et al. (hereinafter, King). This rejection is respectfully traversed.

Inasmuch as Birle and Barron's do not disclose that for which they were cited and relied upon for disclosing as discussed and clearly shown hereinabove, the combination of same with King is insufficient to reject claim 13. Therefore, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claim 13 under 35 USC 103(a).

Claims 15-19 were rejected under 35 USC 103(a) as being disclosed by Birle in view of Barron's in regard to claim 1, and further in view of Daughtery et al. (hereinafter, Daughtery). This rejection is respectfully traversed.

For at least the reasons provided above, Applicant respectfully submits that Birle and Barron's do not disclose that for which they were cited and relied upon for disclosing. Therefore, the combination of Birle, Barron's and Daughtery is insufficient to reject claims 15-19. Therefore, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 15-19 under 35 USC 103(a).

Claims 25-29 and 31 were rejected under 35 USC 103(a) as being disclosed by Birle in view of Barron's in regard to claim 1, and further in view of Daughtery and Marlowe-Noren. This rejection is respectfully traversed.

For at least the reasons provided above, Applicant respectfully submits that Birle and Barron's do not disclose that for which they were cited and relied upon for disclosing. Therefore, the combination of Birle, Barron's, Daughtery, and Marlowe-Noren is insufficient to reject claims 25-29 and 31. Therefore, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 25-29 and 31 under 35 USC 103(a).

Claims 32 and 33 were rejected under 35 USC 103(a) as being disclosed by Birle in view of Green et al. (hereinafter, Green) and in further in view of Barron's. This rejection is respectfully traversed.


For at least the reasons provided above, Applicant respectfully submits that Birle and Barron's do not disclose that for which they were cited and relied upon for disclosing. Therefore, the combination of Birle, Green, and Barron's is insufficient to reject claims 32 and 33. Therefore, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 32 and 33 under 35 USC 103(a).

CONCLUSION

Accordingly, Applicants respectfully request allowance of the pending claims 1-33. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-5985.

Respectfully submitted,

January 13, 2006
Date

A handwritten signature in black ink, appearing to read "Rand P. Calhoun", is written over a horizontal line.

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